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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor: Don Tabor

Title: Propeller System For Kite

Serial No.: 10/617,200

Filing Date: July 10, 2003

Art Unit: 3644

Examiner: Stephen A. Holzen Docket No.: TKF-49

Mail Stop Petitions
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT OF PATENT
APPLICATION (PTO MISTAKE)**

Commissioner:

Applicant has received a Notice of Abandonment dated July 5, 2005 (a copy of which is attached) for the above-identified patent application. According to the Notice of Abandonment, the above-identified patent application is abandoned in view of Applicant's failure to timely file a proper reply to the Final Office Action dated December 17, 2004, a copy of which is also attached.

Applicant did not receive the Final Office Action dated December 17, 2004 as it was mailed to an incorrect addressee (Ogilvy Renault, 1981 McGill College Avenue, Suite 1600, Montreal, QC H3A2Y3, CANADA; a firm that has nothing to do with this application) as can be seen on the cover page of the Final Office Action.

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, with postage fully prepaid thereon, addressed to: Mail Stop Petition, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on 7/20/05.

Date: 7/20/05

Signature: _____

Louis J. Bachand

All correspondence related to the above-identified patent application should have been sent to the undersigned, the registered attorney for Applicant, as evidenced by the Power of Attorney By Inventor(s) (Revocation of Prior Powers) filed with the Patent Office on July 15, 2004, and Change of Correspondence Address Application filed with the Patent Office on October 25, 2004, copies of which are attached.

In view of the fact that Applicant did not receive the Final Office Action because it was misaddressed, Applicant respectfully requests that the Commissioner withdraw holding of abandonment of the above-identified patent application. If anything further is needed from Applicant to revive the above-identified patent application, the Commissioner is invited to contact the undersigned at the telephone number listed below.

It is believed that no fee is due, however, should the Commissioner disagree, the Commissioner is hereby authorized to charge the Petition Fee of \$130.00 to Deposit Account No. 50-3046. A duplicate of this sheet is enclosed.

Respectfully submitted,

Louis J. Bachand, Reg. No. 19,726
P.O. Box 1508
La Canada, CA 91012-5508
Telephone No.: (818) 952-3414
Facsimile No.: (818) 952-3414



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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,220	07/10/2003	Don Tabor	03-11617	2380
25189	7590	07/05/2005		
CISLO & THOMAS, LLP 233 WILSHIRE BLVD SUITE 900 SANTA MONICA, CA 90401-1211			EXAMINER HOLZEN, STEPHEN A	
			ART UNIT 3644	PAPER NUMBER

DATE MAILED: 07/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



EA

Notice of Abandonment	Application No.	Applicant(s)	
	10/617,220	TABOR, DON	
	Examiner	Art Unit	
	Stephen A. Holzen	3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. Applicant's failure to timely file a proper reply to the Office letter mailed on 12/17/2005.
 - (a) A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) No reply has been received.

2. Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) The submitted fee of \$ _____ is insufficient. A balance of \$ _____ is due.
The issue fee required by 37 CFR 1.18 is \$ _____. The publication fee, if required by 37 CFR 1.18(d), is \$ _____.
(c) The issue fee and publication fee, if applicable, has not been received.

3. Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) No corrected drawings have been received.

4. The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.

5. The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.

6. The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.

7. The reason(s) below:

HARVEY E. BEHREND
PRIMARY EXAMINER

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,220	07/10/2003	Don Tabor	03-11617	2380

20988 .7590 12/17/2004

OGILVY RENAULT
1981 MCGILL COLLEGE AVENUE
SUITE 1600
MONTREAL, QC H3A2Y3
CANADA

EXAMINER

HOLZEN, STEPHEN A

ART UNIT	PAPER NUMBER
3644	

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

 Office Action Summary		Application No.	Applicant(s)
		10/617,220	TABOR, DON
		Examiner	Art Unit
		Stephen A. Holzen	3644
-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --			
Period for Reply			
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.			
<ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). <p>Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p>			
Status			
<p>1)<input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>25 October 2004</u>.</p> <p>2a)<input checked="" type="checkbox"/> This action is FINAL. 2b)<input type="checkbox"/> This action is non-final.</p> <p>3)<input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11, 453 O.G. 213.</p>			
Disposition of Claims			
<p>4)<input checked="" type="checkbox"/> Claim(s) <u>15-23 and 28-37</u> is/are pending in the application.</p> <p>4a) Of the above claim(s) <u>1-14 and 24-27</u> is/are withdrawn from consideration.</p> <p>5)<input checked="" type="checkbox"/> Claim(s) <u>33-37</u> is/are allowed.</p> <p>6)<input checked="" type="checkbox"/> Claim(s) <u>15,16,21-23 and 28</u> is/are rejected.</p> <p>7)<input checked="" type="checkbox"/> Claim(s) <u>17-20 and 29-32</u> is/are objected to.</p> <p>8)<input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement.</p>			
Application Papers			
<p>9)<input type="checkbox"/> The specification is objected to by the Examiner.</p> <p>10)<input type="checkbox"/> The drawing(s) filed on _____ is/are: a)<input type="checkbox"/> accepted or b)<input type="checkbox"/> objected to by the Examiner.</p> <p style="margin-left: 20px;">Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).</p> <p style="margin-left: 20px;">Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).</p> <p>11)<input type="checkbox"/> The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.</p>			
Priority under 35 U.S.C. § 119			
<p>12)<input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</p> <p>a)<input type="checkbox"/> All b)<input type="checkbox"/> Some * c)<input type="checkbox"/> None of:</p> <ol style="list-style-type: none"> 1.<input type="checkbox"/> Certified copies of the priority documents have been received. 2.<input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____. 3.<input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). <p>* See the attached detailed Office action for a list of the certified copies not received.</p>			
Attachment(s)			
<p>1)<input type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2)<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3)<input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____</p>		<p>4)<input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.</p> <p>5)<input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6)<input type="checkbox"/> Other: _____</p>	

Response to Arguments

1. Applicant's arguments with respect to claim 15-32 have been fully considered but they are not persuasive. The applicant's arguments with respect to claims 33-37 have been fully considered and are persuasive. The rejection of claims 33-37 has been withdrawn. The rejection of claims 15-32 stands.

The examiner agrees that the Gayla's blades are integral ("one piece"). However the examiner does not agree with the applicant's assertion that Gayla fails to disclose the claimed invention. The applicant's arguments are more specific than the claim language. The propellers of Gayla are separately coupled to each other, even though they are integral (one piece).

Step 7 of Gayla illustrates the claimed aperture, and step 8 illustrates an axle portion extending through the common aperture. Steps 7 and 10 illustrate the support structure. Re – Claim 23: this claim is a product by process. The phrase "snap" imparts no structural relationship. Re – Claim 28: the blades are interlocked with each other due to their integral nature.

2. The applicant has again failed to provide reasons why the election restriction is traversed, therefore the election has been (and still is) considered an election without traverse.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 15,16,21,22,23,28 are rejected under 35 U.S.C. 102(b) as being anticipated by Gayla Industries, Inc. website (herein referred to as Gayla). Gayla disclose a kite comprising a fuselage, at least one wing portion and a propeller system couple to said at least one wing, plural blade portions separably coupled to each other to define a rotating member having a common aperture, a support attached to said wing portion and an axel extending through aperture. (see Step 7 and step 10). Gayla further disclose a base portion coupling said support to at least one wing portion, wherein said axel comprising a post portion and one or more retaining member retaining said axel through said common aperture, wherein said support comprise a circular base and a transverse support portion connected to said base (see cowling) said support portion defining a support aperture registered with said common aperture for receiving said axle in rotating member mounting condition, in which support portion and said base snap together.

Allowable Subject Matter

4. Claims 33-37 are allowed.

5. Claims 17-20 and 29-32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen A. Holzen whose telephone number is 703-308-2484. The examiner can normally be reached on M-F 7:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703 305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sah



TERI PHAM LUU
SUPERVISORY
PRIMARY EXAMINER